



Office of the Attorney General

State of Texas

November 30, 1992

DAN MORALES
ATTORNEY GENERAL

Honorable A. J. (Jack) Hartel
Liberty County Attorney
P. O. Box 9127
Liberty, Texas 77575-9127

Letter Opinion No. 92-79

Re: Appeal of a local health authority's
order to quarantine an animal for rabies
under article 826.042 of the Health and
Safety Code (ID# 17204)

Dear Mr. Hartel:

The Rabies Control Act of 1981, codified as chapter 826 of the Health and Safety Code, authorizes the quarantine of any animal that a local health authority has probable cause to believe may have exposed a person to rabies. Health & Safety Code § 826.042.¹ Neither the act nor the rules adopted by the Texas Board of Health (the "board") pursuant to the act expressly provide for an appeal of an order of quarantine by the owner of a quarantined animal. See 25 T.A.C. §§ 169.21 - 169.33. You ask what is the appropriate forum in which an owner of a quarantined animal may contest the order of quarantine or the conditions placed on the quarantine. Although this office cannot offer an exhaustive answer to your question, we can advise that in the absence of a local administrative remedy, the proper forum depends entirely on the specific judicial relief sought by the aggrieved owner.

As noted, neither the Rabies Control Act nor board rules supply a specific avenue of appeal. However, the act stipulates that the standards provided in the act and in the rules of the board are *minimum* standards for rabies control. Health & Safety Code § 826.012. The governing body of a county or city may adopt the act and the board's standards, or it may adopt ordinances or rules establishing a rabies control program and setting local standards that are compatible with and equal to or more stringent than the act or board rules. Thus, the first source of possible

¹Under the act, the commissioners court of a county and the governing body of a city must appoint an officer to act as the "local health authority" for purposes of the act. Health & Safety Code § 826.017(a). The officer may, unless restricted by a rule adopted by the Texas Board of Health, be the county or municipal health officer, animal control officer, or any entity that the commissioners court or the governing body considers appropriate. *Id.* § 826.017(b).

recourse for an owner of a quarantined animal is the rules or ordinances, if any, adopted by the governing body of the city or county that appointed the local health authority issuing the quarantine.²

In the absence of a local administrative remedy, an aggrieved owner must resort to judicial remedies outside the Rabies Control Act. The specific forum in such cases is necessarily governed by terms of the statute or rule governing the relief sought. This office cannot speculate in an attorney general's opinion on the availability of specific legal or equitable relief to an owner of an animal quarantined pursuant to chapter 826 of the Health and Safety Code. Such advice should be obtained through private counsel fully apprised of all relevant facts in a specific case.³

S U M M A R Y

In the absence of an administrative remedy provided under rules or ordinances adopted by the governing body of a city or county pursuant to the Rabies Control Act of 1981 (chapter 826, Health and Safety Code), the forum for an action contesting an order of quarantine or the conditions of a quarantine is governed by the terms of the statute or rule granting the specific relief sought by the owner of a quarantined animal.

Yours very truly,



Steve Aragón
Assistant Attorney General
Opinion Committee

²The local governmental entity could provide, by rule or ordinance, a procedure for an appeal from the order of the local health authority.

³You do not raise and we therefore do not consider any possible constitutional issues that might be raised in connection with animal quarantine procedures under the Rabies Control Act of 1981.